Supreme Court, U.S.
FILED
MAR 8 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1249

In The
Supreme Court Of The United States

OCTOBER TERM, 1989

LOUIS VITALE and GRACE VITALE,
Petitioners,

v.

CITY OF NEW HAVEN, PETER DURANTE, LOUIS DANIELS, JOSEPH TOSCANO, EILEEN RUOTOLO and EARL WILLIAMS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, JOSEPH TOSCANO AND EILEEN RUOTOLO, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

CLARINE NARDI RIDDLE
ATTORNEY GENERAL
RICHARD T. COUTURE
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105
Telephone: (203) 566-7570
Counsel of Record for Respondents
Joseph Toscano and Eileen Ruotolo

QUESTIONS PRESENTED

1. Whether this action for money damages against respondents Joseph Toscano and Eileen Ruotolo in their official capacities as state officers is barred by the Eleventh Amendment to the United States Constitution?

2. Whether the amended complaint failed to state a claim against respondents Joseph Toscano and Eileen Ruotolo under 42 U.S.C. §§ 1985(3) and 1986?

3. Alternatively, whether the claim set forth in Count Four of the amended complaint against respondent Joseph Toscano relating to the taped phone conversation is barred by the statute of limitations?

4. Alternatively, whether the allegations against respondents Joseph Toscano and Eileen Ruotolo set forth in the Fourth, Fifth, Seventh, Eighth and Eleventh Counts of the amended complaint fail to state a claim upon which relief can be granted?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 1

REASONS FOR DENIAL OF THE PETITION 4

CONCLUSION 10

APPENDIX 1A

TABLE OF AUTHORITIES

Cases: **Page(s)**

DiVernio v. Murphy, 635 F.Supp. 1531 (D. Conn. 1986) 7

Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 65 S.Ct. 347 (1945) 4

Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790 (1971) 5

Kaylor v. Fields, 661 F.2d 1177 (8th Cir. 1981) 6

Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099 (1985) 4, 5

Konon v. Fornal, 612 F.Supp. 68 (D. Conn. 1985) 9

Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979) 5, 6

Lindes v. Sutter, 621 F.Supp. 1197 (D.C.N.J. 1985) 8

Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 104 S.Ct. 900 (1984) 5

Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967) 8

Sager v. City of Woodland Park, 543 F.Supp. 282 (D. Colo. 1982) 5

Singleton v. City of New York, 632 F.2d 185 (2d Cir. 1980), *cert. denied*, 450 U.S. 920, 101 S.Ct. 1368 (1981) 8

Smith v. Gonzales, 670 F.2d 522 (5th Cir. 1982), *cert. denied*, 459 U.S. 1005, 103 S.Ct. 361 (1982) 8

TABLE OF AUTHORITIES (continued)

Cases: **Page(s)**

United Brotherhood of Carpenters & Joiners v. Scott, 463 U.S. 825, 103 S.Ct. 3352 (1983) 6

United States v. White, 401 U.S. 745, 91 S.Ct. 1122 (1971) 7

Will v. Michigan Department of State Police, ___ U.S. ___, 109 S.Ct. 2304 (1989) 5

Williams v. Page, 160 N.J. Super. 354, 389 A.2d 1012 (App. Div. 1978) 9

United States Constitution:

First Amendment 1

Fourth Amendment 1, 6, 8

Eighth Amendment 1

Eleventh Amendment 3, 4, 5

Fourteenth Amendment 1

Federal Statutes:

42 U.S.C. § 1983 . . . . . 1, 5, 8

42 U.S.C. § 1985(3) 1, 5, 6

42 U.S.C. § 1986 . . . . . 1, 6

Connecticut General Statutes:

Conn. Gen. Stat. § 52-577 . . . . . 1, 7

STATUTORY PROVISIONS

The petitioners have misquoted several rules and statutory provisions at pages A-69 to A-71 of their Appendix.[1] The quotations set forth in items 7 and 9 through 15 of Petitioners' Appendix B bear little resemblance to the actual language of the cited rules and statutes. However, the only misquoted statute which has any relevance to the issues presented by the petitioners is Conn. Gen. Stat. § 52-577 which provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

STATEMENT OF THE CASE

This civil rights action was commenced on November 17, 1986, by *pro se* petitioners Louis and Grace Vitale against the City of New Haven, Peter Durante, Director of Building Inspection and Enforcement for the City of New Haven, Patrolman Louis Daniels of the New Haven Police Department, Joseph Toscano, investigator for the Connecticut State's Attorney's Office, Eileen Ruotolo, Clerk and Notary Public in the Connecticut State's Attorney's Office and Attorney Earl Williams. An amended complaint was filed on January 27, 1987, seeking damages under 42 U.S.C. §§ 1983, 1985(3) and 1986 (the "Complaint"). (Pet. App. at A-1.) The Complaint alleges that the respondents deprived the petitioner Louis Vitale of his constitutional rights protected by the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution. (Pet. App. at A-33.)

With respect to respondent Joseph Toscano, the Fourth Count of the Complaint alleges that on or about May 28, 1983, Mr. Toscano illegally taped a phone conversation

---

[1] References to the Appendix attached hereto will be noted by the sign "App." The sign "Pet. App." refers to the Appendix filed with the Petition for Writ of Certiorari.

between Mr. Toscano and Mr. Vitale. (Pet. App. at A-11 to A-13.) In the Fifth Count of the Complaint, the petitioners allege that on or about December 14, 1983, the respondent Toscano made false statements in an arrest warrant charging Mr. Vitale with the crime of perjury and then failed to sign the warrant. (Pet. App. at A-14, A-15.) It is alleged that this arrest warrant was signed by a judge. (Pet. App. at A-25.) It is further alleged that the perjury charges were dismissed on September 9, 1985, following a hearing on the issue of the competency of Mr. Vitale to stand trial. (Pet. App. at A-27, A-28.)

Regarding the respondent Eileen Ruotolo, the Complaint alleges in Count Seven that Mrs. Ruotolo was guilty of misconduct in the performance of her duties in that she falsely certified that respondent Toscano had signed the affidavit on the arrest warrant charging petitioner Louis Vitale with the crime of perjury. (Pet. App. at A-20, A-21.) In the Eleventh Count of the Complaint, the petitioners allege that all of the defendants conspired to deprive petitioner Louis Vitale of various constitutional rights. (Pet. App. at A-33.)

This action was brought against respondents Toscano and Ruotolo solely in their official capacities as state officers. In paragraph 8 of the First Count of the Complaint, the petitioners assert that "[e]ach and all of the acts of the defendants alleged herein were done by defendants, each of them, not as individuals, but under . . . the authority of their offices. . . ." (Pet. App. at A-3.) Respondents Toscano and Ruotolo filed a motion to dismiss the complaint on April 17, 1987. (App. at 1A.) The District Court granted the respondents' motion to dismiss by a Ruling which was filed with the Clerk's office on December 30, 1988. (Pet. App. at A-36 to A-57.)[2] A judgment in favor of the respondents dismissing

---

[2] The respondents recognize that there are a number of typographical errors in the Appendix to the Petition including those pages which contain the rulings of the District Court and the Court of Appeals. Since those errors do not change the substance of the rulings, it was felt that the expense of reprinting them herein would not be justified.

the Complaint was entered on January 4, 1989. (Pet. App. at A-58.)

With respect to respondents Joseph Toscano and Eileen Ruotolo, the District Court found that this action for money damages was brought against them solely in their official capacities and was barred by the Eleventh Amendment. (Pet. App. at A-48 to A-50.) The District Court also ruled that the Complaint failed to state a claim against any of the defendants under 42 U.S.C. §§ 1985(3) and 1986. (Pet. App. at A-43 to A-45.)

On January 27, 1989, the petitioners filed a Notice of Appeal with the United States Court of Appeals for the Second Circuit. (Pet. App. at A-59.) In the brief which the petitioners filed with the Court of Appeals, they once again expressed their intent that the state itself be liable under 42 U.S.C. §§ 1983, 1985(3) and 1986 for the acts of its agents. The section of the petitioners' appellate brief which addressed the issue of Eleventh Amendment immunity is reprinted in full at pages 3A–6A of the appendix attached hereto. On August 21, 1989, the United States Court of Appeals for the Second Circuit issued its summary order affirming the judgment of the District Court. (Pet. App. at A-60 to A-65.) The petitioners' Motion for Rehearing or Reconsideration was denied on November 20, 1989. (Pet. App. at A-67.)

Having dismissed the Complaint on the above-stated grounds, neither the District Court nor the Court of Appeals decided the issue as to whether the claim set forth in the Fourth Count of the Complaint against defendant Toscano was barred by the statute of limitations. In addition, neither the District Court nor the Court of Appeals found it necessary to rule on whether the Section 1983 allegations contained in the Fourth, Fifth, Seventh, Eighth and Eleventh Counts of the Complaint, as they may pertain to respondents Toscano and Ruotolo, fail to state a claim upon which relief can be granted. These arguments were raised in respondents' motion to dismiss and in respondents' appellate brief as alternative grounds supporting dismissal of the Complaint and are discussed briefly in Section 2 hereof.

REASONS FOR DENYING THE PETITION

I. THE DECISION OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT IS CONSISTENT WITH THE RULINGS OF OTHER COURTS OF APPEAL AND OF THIS COURT.

A. This Action For Money Damages Against Joseph Toscano and Eileen Ruotolo In Their Official Capacity As State Officers Is Barred By The Eleventh Amendment.

In paragraph 8 of the First Count of the Complaint, the petitioners allege that the respondents Joseph Toscano and Eileen Ruotolo were acting at all relevant times, not as individuals, but under the authority of their official positions. (Pet. App. A-3.) In their brief to the Court of Appeals, the petitioners again argued that the state is liable for money damages in suits brought pursuant to the Civil Rights Act of 1871. (App. at 5A.) The petitioners continue to argue in their Petition for Writ of Certiorari that the Civil Rights Act of 1871 abrogated the Eleventh Amendment immunity of the states. (Petition at pp. 15–16.) It is clear both from the language of the Complaint and the arguments advanced by the petitioners that respondents Toscano and Ruotolo were sued solely in their official capacities with the intent to impose liability on the state.

"[A]bsent waiver by the State or valid congressional override, the Eleventh Amendment bars a damage action against a State in federal court." *Kentucky v. Graham*, 473 U.S. 159, 169, 105 S.Ct. 3099, 3107 (1985). "[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459, 464, 65 S.Ct. 347, 350

(1945); *see also, Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89, 101, 104 S.Ct. 900, 908 (1984). The general rule is that the suit is against the sovereign if the judgment sought would expend itself on the public treasury. *Pennhurst,* 465 U.S. at 101, 104 S.Ct. at 908. The Eleventh Amendment, therefore, serves to bar suits for money damages against state officials in their official capacity. *Kentucky v. Graham, supra,* 473 U.S. at 169, 105 S.Ct. at 3107.

The petitioners' claim that § 1983 abrogates the Eleventh Amendment immunity of the states is inconsistent with well-established precedent. In *Will v. Michigan Department of State Police,* ____ U.S. ____, 109 S.Ct. 2304, 2312 (1989), this Court held "that neither a State nor its officials acting in their official capacities are 'persons' under § 1983." The decision below affirming the dismissal of this action against respondents Toscano and Ruotolo in their official capacities on the basis of Eleventh Amendment immunity is in accord with the clear precedent established by this Court.

B. The Complaint Fails To State A Claim Under 42 U.S.C. §§ 1985(3) And 1986.

To establish a cause of action for conspiracy under 42 U.S.C. § 1985(3), a complaint must allege, *inter alia,* "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions." *Griffin v. Breckenridge,* 403 U.S. 88, 102, 91 S.Ct. 1790, 1798 (1971). In other words, the petitioners must allege that they are members of some class or group that warrants special federal assistance in protecting their civil rights, *Sager v. City of Woodland Park,* 543 F.Supp. 282, 291 (D. Colo. 1982), and that they were discriminated against "because of" their membership in the specially protected class. *Lessman v. McCormick,* 591 F.2d 605, 608 (10th Cir. 1979).

The only class to which the petitioner Louis Vitale claims membership is a group consisting of witnesses in civil or

criminal proceedings. (Pet. App. at A-32.) This is certainly not a sufficiently invidious class to warrant the special protections afforded under Section 1985(3). *See, e.g., United Brotherhood of Carpenters & Joiners v. Scott*, 463 U.S. 825, 836-839, 103 S.Ct. 3352, 3360-61 (1983).

A cause of action under 42 U.S.C. § 1986 is dependent upon a valid § 1985 claim. *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir. 1981); *Lessman v. McCormick, supra*, 591 F.2d at 608 (10th Cir. 1979). Since the petitioners failed to state a valid § 1985 claim, their § 1986 claim must also fail. Moreover, a § 1986 claim is governed by that provision's explicit one-year limitation period. Since the petitioners did not initiate their action within one year of any of the acts complained of, their § 1986 claim is time barred.

The ruling of the Second Circuit Court of Appeals in this case concerning the petitioners' section 1985(3) and 1986 claims is fully consistent with the decisions of other United States courts of appeals and of this Court.

II. ADDITIONAL GROUNDS WHICH WOULD HAVE SUPPORTED DISMISSAL OF THE COMPLAINT.

A. The Claim In The Fourth Count Against Joseph Toscano Is Barred By The Statute Of Limitations.

In the Fourth Count of their Complaint, the petitioners claim that Mr. Toscano taped a telephone conversation between himself and Mr. Vitale on or about May 28, 1983. Mr. Vitale further claims that he became aware of the fact that this conversation was taped during the course of his testimony in state court proceedings on June 6, 1983. (Pet. App. at A-11 to A-13.) It is asserted that the taping of this telephone conversation violated Mr. Vitale's right to privacy under federal and state laws and the Fourth Amendment to the United States Constitution. The three-year general tort

statute of limitations set forth in Conn. Gen. Stat. § 52-577 has been held to be the operative statute of limitations in § 1983 actions brought in Connecticut. *DiVernio v. Murphy*, 635 F.Supp. 1531, 1534 (D. Conn. 1986). Both the taping of the phone conversation and Mr. Vitale's discovery thereof occurred beyond the three-year limitations period. Although the lower courts did not deem it necessary to decide this issue, it serves as another basis supporting the dismissal of the Complaint.

B. The Taping Of The Phone Conversations Alleged In Count Four Of The Complaint Did Not Violate Any Rights Secured By The Constitution Or Federal Law.

It is clear from the Complaint that Mr. Vitale voluntarily telephoned Mr. Toscano who he knew to be an investigator with the State's Attorney's Office and freely conversed with him regarding a pending criminal matter involving a Mr. Rodriguez. (Pet. App. at A-11, A-12.) Since Mr. Vitale willingly and knowingly conversed with Mr. Toscano, he cannot claim an unconstitutional invasion of any justifiable privacy interest or expectation simply because the conversation was simultaneously recorded by Mr. Toscano. *See, e.g., United States v. White*, 401 U.S. 745, 751, 91 S.Ct. 1122 (1971). While the lower courts did not reach this issue, it is another alternative basis supporting dismissal of the Complaint.

C. The Complaint Failed To State A Claim Against Respondents Toscano And Ruotolo For False Arrest, False Imprisonment Or Malicious Prosecution.

The primary allegations against respondents Toscano and Ruotolo relating to Mr. Vitale's arrest on perjury charges are contained in the Fifth, Seventh and Eighth Counts of the Complaint. The petitioners allege that the affidavit of Mr. Toscano contained false statements (Pet. App. at A-15); that Mr. Toscano did not sign the affidavit (Pet. App. at A-15);

that Mrs. Ruotolo falsely certified that Mr. Toscano had signed and acknowledged the arrest warrant affidavit (Pet. App. at A-21); that the arrest warrant was signed by a judge (Pet. App. at A-25); that Mr. Vitale was referred to the Court Consultation Clinic for a competency evaluation (Pet. App. at A-27 to A-29); and that the perjury charges were dismissed on September 6, 1985, following a hearing on Mr. Vitale's competency to stand trial. (Pet. App. at A-27 to A-29.)

The Fourth Amendment to the United States Constitution prohibits arrests without probable cause. *Pierson v. Ray*, 386 U.S. 547, 557, 87 S.Ct. 1213, 1219 (1967). An arrest pursuant to a warrant which is valid on its face is not false. *Smith v. Gonzales*, 670 F.2d 522, 526 (5th Cir. 1982), *cert. denied*, 459 U.S. 1005, 103 S.Ct. 361 (1982). The Complaint does not allege that the arrest warrant was invalid on its face or that the arrest was without probable cause. With respect to Mrs. Ruotolo, the petitioners make no claim that she provided any information upon which the arrest warrant was based, that she was in any way responsible for determining whether probable cause existed for the arrest, that she participated in any way in the arrest and booking procedures, or that she was in any way involved in the court proceedings which followed.

In order to establish a state tort claim or a Section 1983 cause of action for malicious prosecution, the petitioner must show that the criminal proceeding at issue was terminated in his favor. *Singleton v. City of New York*, 632 F.2d 185, 194-95 (2nd Cir. 1980), *cert. denied*, 450 U.S. 920, 101 S.Ct. 1368 (1981). "Proceedings are 'terminated in favor of the accused' only when their final disposition is such as to indicate the accused is not guilty, Restatement (Second) of Torts § 660, Comments a & b (1977)." *Id.* at 193. A dismissal based on incompetency to stand trial leaves open the question of the accused's guilt, and cannot be claimed to be a termination favorable to the accused. *See, Singleton v. City of New York, supra*, 632 F.2d at 193-95 (dismissal following successful completion of "adjournment period" is not a disposition favorable to the accused); *Lindes v. Sutter*, 621 F.Supp.

1197, 1201 (D.C.N.J. 1985) (successful completion of "pretrial intervention program" does not constitute a favorable termination of proceedings); *Konon v. Fornal*, 612 F.Supp. 68, 70 (D. Conn. 1985) (dismissal following "accelerated rehabilitation program" is not a termination in favor of accused); *Williams v. Page*, 160 N.J. Super. 354, 389 A.2d 1012, 1017 (App. Div. 1978) (dismissal by reason of insanity does not constitute a favorable termination).

These arguments are presented here as alternative grounds in support of the lower court's dismissal of the Complaint. These issues were briefed but not ruled upon by the District Court or the Court of Appeals.

CONCLUSION

For all the foregoing reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

CLARINE NARDI RIDDLE
ATTORNEY GENERAL

RICHARD T. COUTURE
Assistant Attorney General
MacKenzie Hall
110 Sherman Street
Hartford, CT 06105
Telephone: (203) 566-7570

Counsel of Record for Respondents
Joseph Toscano and Eileen Tuotolo

March 8, 1990

No. 89-1249

In The
Supreme Court Of The United States

OCTOBER TERM, 1989

LOUIS VITALE and GRACE VITALE,
Petitioners,

v.

CITY OF NEW HAVEN, PETER DURANTE, LOUIS DANIELS, JOSEPH TOSCANO, EILEEN RUOTOLO and EARL WILLIAMS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPENDIX TO BRIEF OF RESPONDENTS JOSEPH TOSCANO AND EILEEN RUOTOLO IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

APPENDIX TABLE OF CONTENTS

Page

Motion To Dismiss 1A

Excerpts From Petitioners' Brief To The United States Court Of Appeals For The Second Circuit 3A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOUIS VITALE, ET AL PLAINTIFFS,	:	CIVIL NO. N-86-400 (EBB)
v.	:	
CITY OF NEW HAVEN, ET AL DEFENDANTS.	:	APRIL 7, 1987

MOTION TO DISMISS

The defendants, Joseph Toscano and Eileen Ruotolo, pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, hereby move to dismiss the amended complaint for the following reasons:

1. In that this is an action for money damages against defendants Toscano and Ruotolo in their official capacities as Inspector and Clerk with the Connecticut State Attorney's Office, the suit is barred by the Eleventh Amendment to the United States Constitution.

2. The Plaintiffs' amended complaint fails to state a claim upon which relief can be granted as to defendants Toscano and Ruotolo.

3. The claimed violations under 42 U.S.C. § 1986 are time barred.

4. The claims set forth in Count 4 of the amended complaint are barred by the applicable statute of limitations.

5. To the extent that the plaintiffs are attempting to state a claim for false arrest and/or false imprisonment in Counts 5 and 7 of the amended complaint, the claims are barred by the applicable statute of limitations.

RESPECTFULLY SUBMITTED,
DEFENDANTS
JOSEPH TOSCANO AND
EILEEN RUOTOLO

BY: JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

/s/ Richard T. Couture
Richard T. Couture
Assistant Attorney General
555 Russell Road
P.O. Box 11424
Newington, CT 06111
Tele. (203) 566-7570

CERTIFICATION OF SERVICE

This is to certify that on the 7th day of April, 1987, a copy of the foregoing Motion to Dismiss was mailed, postage prepaid, to:

Louis and Grace Vitale
162 Standish Avenue
North Haven, CT 06473

Earl I. Williams, Esq.
129 Church St.
New Haven, CT 06510

Carolyn R. Spencer
Assistant Corporation Counsel
Office of the Corporation Counsel
City of New Haven
770 Church Street
New Haven, CT 06510

/s/ Richard T. Couture
Richard T. Couture
Assistant Attorney General

EXCERPT FROM PETITIONERS' BRIEF TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States Court of Appeals

FOR THE SECOND CIRCUIT

DOCKET NO. 89-7282

LOUIS VITALE and GRACE VITALE
Plaintiffs-Appellants

—V—

CITY OF NEW HAVEN, PETER DURANTE, LOUIS DANIELS, JOSEPH TOSCANO, AND EILEEN I. RUOTOLO
Defendants-Appellees

BRIEF OF THE PLAINTIFFS-APPELLANTS LOUIS VITALE and GRACE VITALE

LOUIS VITALE, PRO SE
GRACE VITALE, PRO SE

To Be Argued By:
LOUIS VITALE, PRO SE

TABLE OF CONTENTS

Page

Table of Cases, Statutes and Authorities ii

Statement of Issues .....

Statement of Facts 2

Arguments 13

I. WHETHER IT WAS ERROR FOR THE DISTRICT COURT TO GRANT THE JUDGMENT JANUARY 4, 1989 BECAUSE THE STATUTE OF LIMITATION HAS EXPIRED? 13

II. WHETHER IT WAS ERROR FOR THE DISTRICT COURT TO GRANT JUDGMENT JANUARY 4, 1989 THAT THE DEFENDANTS CITY OF NEW HAVEN, PETER DURANTE AND LOUIS DANIELS CAN NOT BE SUED FOR THE CIVIL RIGHTS VIOLATION OF THE PLAINTIFF LOUIS VITALE? 15

III. WHETHER IT WAS ERROR FOR THE DISTRICT COURT TO GRANT JUDGMENT JANUARY 4, 1989 THAT THE DEFENDANTS JOSEPH TOSCANO AND EILEEN I. RUOTOLO CAN NOT BE SUED FOR THE CIVIL RIGHTS VIOLATION OF THE PLAINTIFF LOUIS VITALE AS AGENTS FOR THE STATE OF CONNECTICUT? 18

IV. WHETHER IT WAS ERROR FOR THE DISTRICT COURT TO GRANT JUDGMENT JANUARY 4, 1989 IN READING THE COMPLAINT AS NARROW AS POSSIBLE AND DREW EVERY INFERENCE ADVERSE TO THE PLAINTIFFS' CLAIMS? 19

Conclusion 27

Appendix A 1a–5a

Appendix B 1b–6b

III. WHETHER IT WAS ERROR FOR THE DISTRICT COURT TO GRANT JUDGMENT 4, 1989 THAT THE DEFENDANTS JOSEPH TOSCANO AND EILEEN I. RUOTOLO CAN NOT BE SUED FOR THE CIVIL RIGHTS VIOLATION OF THE PLAINTIFF LOUIS VITALE AS AGENTS FOR THE STATE OF CONNECTICUT?

The Fourteenth Amendment under the Constitution for the United States was adopted to protect the citizens of each respective state against the violation of their constitutional rights from the employees, agents and the state. The Civil Rights Act, Title 42 U.S.C. §§§. 1983, 1985(2)(3) and 1986 was passed to sue those who violate a citizens' rights is liable for the damages suffered.

The express intent of Congress, with the enactment of the Civil Rights Act of 1871, was the states themselves, as bodies politics and corporate should be embraced by the term "person" in §. 1 of that act.

Monell v. New York City Dept. of Social Services, 436 U.S. at 689-90, held that "(S)ince there is nothing in the "context" of the Civil Rights Act calling for a restricted interpretation of the word "person." The language of that section should prima facie be construed to include "bodies politics" among the entities that could be sued. §. 1983 was enacted as §. 5, of the Fourteenth Amendment (F)ull force and effect and that the prohibitions of that Amendment to be address to the States themselve. *Monell,* 436 at 685 n.45.

Employees of City and State are not immune from suit under the statute relating to civil actions for deprivations for constitutional protected rights on the ground that officials were acting within the scope of their responsibility or performing a discretionary act. *Bunch v. Barnett,* 376 F. Supp. 23 (1973).

§. 1983 would abrogate the Eleventh Amendment sovereign immunity of States to the extent necessary to provide full relief includes compensation for persons injured by a deprivation of federal protected rights and the prevention of abuse of power by those acting under color of state law. *Robertson v. Wegmann*, 436 U.S. 584, 591, 98 S.Ct. 1991, 1996, 56 L.Ed.2d 554 (1978).

Even the Court's today does not dispute the fact that in the phrase "bodies politic and corporate" would certainly refer to the states as being a person. *Heim v. McCall*, 239 U.S. 175, 188 (1915); *McPherson v. Blacker*, 146 U.S. 1, 24, (1892).